

**UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Daniel Patrick Moynihan
United States Courthouse, 500 Pearl Street, in the City of
New York, on the 25th day of October, two thousand seven.

PRESENT:

HON. JON O. NEWMAN,
HON. JOSÉ A. CABRANES,
HON. DEBRA ANN LIVINGSTON,
Circuit Judges.

WEN YANG LIN,
Petitioner,

v.

PETER D. KEISLER,¹
ACTING U.S. ATTORNEY GENERAL,
Respondent.

05-4927-ag
NAC

¹ Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Acting Attorney General Peter D. Keisler is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

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2 **FOR PETITIONER:** Wen Yang Lin, pro se, New York, New
3 York.

4
5 **FOR RESPONDENT:** **Brett L. Tolman, United States**
6 **Attorney, District of Utah; Dustin**
7 **Pead, Assistant United States**
8 **Attorney, Salt Lake City, Utah.**
9

10 UPON DUE CONSIDERATION of this petition for review of a
11 Board of Immigration Appeals ("BIA") decision, it is hereby
12 ORDERED, ADJUDGED, AND DECREED, that the petition for review
13 is DENIED.

14 Wen Yang Lin, a native and citizen of the People's
15 Republic of China, seeks review of an August 19, 2005 order
16 of the BIA affirming the March 2, 2004 decision of
17 Immigration Judge ("IJ") Theresa Holmes-Simmons, which
18 denied his application for relief under the Convention
19 Against Torture ("CAT").² *In re Wen Yang Lin*, No. A76 641
20 152 (B.I.A. Aug. 19, 2005), *aff'g* No. A76 641 152 (Immig.
21 Ct. N.Y. City Mar. 2, 2004). We assume the parties'
22 familiarity with the underlying facts and procedural history
23 in this case.

24 When the BIA affirms the IJ's decision in all respects

² Although the IJ's decision purported to deny Lin's application for asylum and withholding of removal, as the BIA properly observed, Lin never applied for that relief.

1 but one, this Court reviews the IJ's decision as modified by
2 the BIA decision, i.e., "minus the single argument for
3 denying relief that was rejected by the BIA." *Xue Hong Yang*
4 *v. U.S. Dep't of Justice*, 426 F.3d 520, 522 (2d Cir. 2005).
5 We review the agency's factual findings under the
6 substantial evidence standard, treating them as "conclusive
7 unless any reasonable adjudicator would be compelled to
8 conclude to the contrary." 8 U.S.C. § 1252(b)(4)(B); see,
9 e.g., *Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir.
10 2004), *overruled in part on other grounds by Shi Liang Lin*
11 *v. U.S. Dept. of Justice*, 494 F.3d 296, 305 (2d Cir.
12 2007) (en banc).

13 We find that substantial evidence supports the agency's
14 denial of Lin's CAT claim. We have held that without any
15 particularized evidence, an applicant cannot demonstrate
16 that he is more likely than not to be tortured "based solely
17 on the fact that [he] is part of the large class of persons
18 who have left China illegally" and on generalized evidence
19 indicating that torture occurs in Chinese prisons. *Mu Xiang*
20 *Lin v. U.S. Dep't of Justice*, 432 F.3d 156, 160 (2d Cir.
21 2005) (emphasis in original); see also *Pierre v. Gonzales*, --
22 - F.3d ---, 2007 WL 2597600, at *8 (2d Cir. Sept. 11, 2007)

1 (holding that beyond evidence of inhumane prison conditions,
2 a CAT claimant must provide some evidence that the
3 authorities act with the specific intent to inflict severe
4 physical or mental pain or suffering on those detained).

5 Here, Lin provided no basis for the IJ to conclude that
6 he, or someone in his "particular alleged circumstances,"
7 faces an elevated risk of persecution or torture. See *Mu-*
8 *Xing Wang v. Ashcroft*, 320 F.3d 130, 144 (2d Cir. 2003).

9 Although Lin testified that a man from his village had been
10 imprisoned and fined for illegally departing China, such
11 lawfully imposed sanctions do not constitute torture. See 8
12 C.F.R. § 208.18(a)(3) (noting that torture does not include
13 pain or suffering arising only from, inherent in, or
14 incidental to, lawful sanctions). Moreover, Lin did not
15 point to any particular similarities between this man's
16 circumstances and his own situation. See *Mu Xiang Lin*, 432
17 F.3d at 160. Accordingly, substantial evidence supports the
18 agency's conclusion that Lin failed to meet the high burden
19 of proof for his CAT claim. See *Mu-Xing Wang*, 320 F.3d at
20 143-44.

21 For the foregoing reasons, the petition for review is
22 DENIED. As we have completed our review, any stay of

1 removal that the Court previously granted in this petition
2 is VACATED, and any pending motion for a stay of removal in
3 this petition is DISMISSED as moot. Any pending request for
4 oral argument in this petition is DENIED in accordance with
5 Federal Rule of Appellate Procedure 34(a)(2), and Second
6 Circuit Local Rule 34(d)(1).

7 FOR THE COURT:

8 Catherine O'Hagan Wolfe, Clerk

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10 By: _____